

## **REMARKS**

Claims 1-19 were pending in this application. With entry of this Amendment, claims 11-15, 17, and 19 are canceled without prejudice or disclaimer. Thus, claims 1-10, 16, and 18 are now pending. Applicants thank the Examiner for noting that claims 1-14, 16, and 18 are free of the prior art. In so noting, the Examiner characterizes various aspects of Applicants' claimed invention. To clarify the record, Applicants note that the present claims recite a method that comprises:

- (a) initiating the germination of a soybean seed;
- (b) isolating the embryonic axis including the embryonic meristem from the soybean seed to prepare an explant;
- (c) exposing the explant to a disarmed *Agrobacterium* vector comprising a heterologous genetic construct comprising a selectable marker gene wherein the heterologous genetic construct is transferred into at least one cell in the explant;
- (d) culturing the explant in the presence of a selection agent in a manner allowing identification of soybean cells of the explant to which the heterologous genetic construct has been transferred;
- (e) inducing formation of one or more shoots from the explant, the shoot comprising germline transformed cells; and
- (f) cultivating the shoot into a whole fertile mature soybean plant.

## **Novelty Rejections**

The Examiner rejected claims 15, 17, 19, which are directed to transgenic soybean plants, cells and shoots made by the process of claims 1 or 16. According to the Examiner, the

recitation of process steps in these product claims does not distinguish the claimed products from other transgenic soybean plants, cells, and shoots made by different processes. Applicants have canceled claims 15, 17, and 19, and respectfully request that the rejection be withdrawn.

#### Double Patenting Rejections

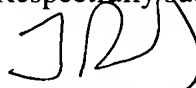
The Examiner rejected claims 1-10, 16, and 18 under the judicially-created doctrine of obviousness-type double patenting in view of claims 1-13 of U.S. Patent No. 6,384,301. Applicants have provided a terminal disclaimer with this response. Thus, the rejection has been overcome.

The Examiner also rejected claims 11-14 under 35 U.S.C. §101 as allegedly claiming the same invention as claims 1 and 11-13 of U.S. Patent No. 6,384,301. Applicants have canceled claims 11-14, and respectfully request that the rejection be withdrawn.

#### Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the present application. The Examiner is encouraged to call the undersigned should any further action be required for allowance.

Respectfully submitted,

  
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April 11, 2005